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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: RM-8643 - Petition for Rulemaking of Pacific Bell Mobile Services Regarding a Plan for Sharing the Costs of Microwave Relocation

Yesterday, James Tuthill, General Counsel and Vice President, External Affairs, Pacific Bell Mobile Services, Paul Milgrom, Professor, Stanford University and I met with Gregory Rosston, Deputy Chief Economist, Evan Kwerel, and William Sharkey of the Office of Plans and Policy; Jackie Chorney, Legal Assistant to the Wireless Telecommunications Bureau Chief; Rosalind K. Allen, Chief, Tom Dombrowsky, and Linda Kinney, Commercial Radio Division, Wireless Telecommunications Bureau; Peter A. Tenhula and Lisa Higginbotham of the Office of General Counsel; Rudolfo M. Baca, Legal Advisor to Commissioner Quello; Lisa B. Smith, Senior Legal Advisor, and Robert Tanner, intern, Office of Commissioner Barrett; and David Furth, Special Advisor to Commissioner Chong. In addition, Mr. Tuthill and I discussed these same matters with David R. Siddall, Legal Advisor to Commissioner Ness. Today, we met with Ruth Milkman, Senior Legal Advisor to Chairman Hundt to discuss these issues. Please associate this material with the above-referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

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Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,


Gina Harrison

Attachments (3)

cc: Rosalind K. Allen
Rudolfo M. Baca
Jackie Chorney
Tom Dombrowsky
David Furth
Lisa Higginbotham
Linda Kinney
Evan Kwerel
Ruth Milkman
Gregory Rosston
William Sharkey
David R. Siddall
Lisa B. Smith
Robert Tanner
Peter A. Tenhula



**Personal
Communications
Industry
Association**

September 22, 1995

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 N Street, N.W.
Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

The Personal Communications Industry Association ("PCIA") hereby submits the enclosed materials detailing an issue of vital importance to the industry that has arisen in connection with the attempts of various members of PCIA to deploy new Personal Communications Services ("PCS"). PCIA represents virtually all major players in the licensed PCS industry who have been actively involved throughout the Commission's proceedings leading to the allocation of spectrum for PCS and the promulgation of rules governing the relocation of incumbent microwave systems from that spectrum. As that relocation process has proceeded, it has become evident that certain parties are seeking to misuse the Commission's rules to secure windfall payments well beyond the full cost compensation and comparable alternative facilities to which they are entitled.

As a result, PCIA and its members have taken the lead in bringing these concerns to the attention of the FCC together with their collective recommendations for measured adjustments to the existing transition rules to inhibit such abuses while at the same time maintaining microwave incumbents' legitimate rights and protections. PCIA urges your prompt adoption of these proposals in order to ensure that the vast public interest benefits of PCS are not unduly delayed and that the substantial expected dividends from PCS auctions and deployments are not diverted from the government and consumers.

Respectfully submitted,

Mark Golden
Vice-President, Industry Affairs

cc: **Commissioner Andrew C. Barrett**
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Commissioner James H. Quello

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PCIA is the consolidation of the Personal Communications Industry Association and the National Association of Business and Educational Radio

THE FCC'S CURRENT MICROWAVE RELOCATION RULES

Licenses of Auctioned Personal Communications Service ("PCS") Spectrum Will Be Impeded in Deploying Their Services Until Thousands of Microwave Links Are First Relocated. In its Emerging Technologies docket, the Commission allocated the spectrum at 1850-1910 MHz and 1930-1990 MHz to licensed PCS. That spectrum was divided into three 30 MHz blocks and three 10 MHz blocks. Two of the 30 MHz blocks were designated for licensing on a Major Trading Area ("MTA") basis, and the remaining 30 MHz block as well as the 10 MHz blocks are to be licensed on a geographically smaller Basic Trading Area ("BTA") basis.

The PCS spectrum is currently home to approximately 4500 microwave links (approximately 9000 licenses). These links must be relocated to other frequencies in order to permit the construction of PCS systems and the deployment of exciting new services by the auction winners. The links are distributed throughout the A-F blocks in varying concentrations, as illustrated in the chart appended as Attachment A. The ability or inability to relocate these microwave links rapidly will directly affect how soon the public receives the benefit of innovative competitive services and the value of the yet to be auctioned C, D, E & F block PCS spectrum.

Notwithstanding the Importance of Rapid Relocation, the Current Rules Entitle Incumbents To Prolong the Relocation Period for Licensed PCS for At Least Another 5 to 7 Years. The FCC's transition rules for the ET spectrum ensure that relocated incumbent licensees will receive full cost compensation and comparable alternative facilities. They further envision that the relocations will be accomplished through voluntary negotiations between auction winners and microwave licensees followed, if necessary, by a mandatory good faith negotiation period and the ultimate possibility of involuntary relocation.

The relocation time periods differ depending upon the nature of the microwave system and the identity of the PCS entity seeking relocation. Non-public safety microwave systems relocated by PCS licensees will have a two-year voluntary negotiation period, followed by a one-year mandatory negotiation period. Non-public safety incumbents relocated by UTAM, the unlicensed PCS frequency coordinator, have only a one-year mandatory negotiation period. All public safety microwave systems have a three-year voluntary period, followed by a two-year mandatory period. (See Attachment B)

Once an agreement to relocate a microwave link has been reached, approximately one year will be necessary to secure all required authorizations, engineer, and construct a comparable alternative system. Moreover, under the rules, a microwave licensee is entitled to be returned to its original frequencies if, within one year after acceptance of new facilities, the facilities prove not to be comparable in

terms of performance (this is referred to as the "testing period"). Any dispute resolution procedures required as a result of disagreement among the parties after the close of the mandatory negotiation period may create additional delays. (See Attachment C)

As a result, the relocation period for a non-public safety microwave link may extend up to 5 years, and up to 7 years for a public safety link. The start date for the voluntary negotiation period for the A and B block PCS licensees was April 5, 1995, which means that relocations of both general and public safety microwaves in those blocks may not be complete until the year 2002. Because the start dates for the C, D, E, and F licensees have not yet been set, the relocations for those blocks can be expected to extend considerably into the next century under the current rules.

Such Substantial Delays May Disadvantage PCS Technologically and Competitively. The five to seven years needed to relocate the incumbents can be several technological lifetimes for a wireless service. At the same time, existing competing services will enjoy less vigorous competition, thus reducing opportunities and further increasing the costs of the new entrants. Accordingly, even apart from the additional, unforeseen problems that have arisen in the relocation process, PCS licensees face formidable risks in their efforts to deploy successful PCS systems under the existing transition rules.

UNFORSEEN CONSEQUENCES OF THE FCC TRANSITION RULES

Some Microwave Incumbents and Their Advisors Are Abusing the Transition Rules for Private Gain. In response to questions posed by NTIA and others during the Commission's PCS rulemaking, representatives from the microwave community consistently professed their intention to act reasonably during relocation negotiations. (See Attachment D) However, with the advent of A and B block licensing, a microwave trade association and certain consultants and lawyers for the microwave community have apparently determined that the combination of the FCC's transition rules, the \$7.7 billion paid for the A and B block licenses, and the substantial cost of delays in initiating service for A and B block licensees, presents an opportunity to leverage exorbitant premium payments out of those licensees. As the following examples illustrate, certain incumbents and their advisors are attempting to unfairly exploit the FCC's generous relocation timeframes which were designed to protect licensees from service interruptions, not to provide an opportunity to secure windfall profits.

- Some microwave incumbents have requested four to five times the actual costs of comparable facilities in negotiations with PCS licensees for relocation agreements. Attachment E includes several examples of actual situations faced by PCS licensees in their efforts to secure relocation agreements.
- Consultants and attorneys are encouraging incumbents to view comparable facilities as an undesirable and undervalued minimum they should expect in return for their relocation. For example, one set of materials sent to microwave incumbents states that "[t]he issue of 'comparable' facilities has almost nothing to do with [the voluntary] phase of the negotiations." (See Attachment E)
- Consultants and attorneys are charging incumbents significant sums to assist in obtaining unwarranted premiums from PCS licensees with the apparent expectation that such costs will be underwritten by PCS licensees themselves as reimbursement for relocation expenses. One example of this is a contract for \$180,000 for consulting services for the city of San Diego. As part of their services, the consultants will determine, "[t]he net profitability of each market to the wireless providers," as well as an analysis of each PCS licensee on the basis of capitalization, spectrum auction bid, business experience, and other factors, all of which are largely irrelevant to the issue of providing the incumbent with comparable facilities. (See Attachment E)

Future C, D, E and F Block Licensees Will Experience Even Greater Problems From Such Abusive Practices. Future C, D, E and F block licensees will already be playing catch-up with A and B block licensees as a result of the delay in their auctions. Their situations will be rendered even more precarious because several factors suggest that they will be even more vulnerable to, and suffer greater hardship as a result of, the abuses described above.

- Because the C, D, E and F blocks will be auctioned for BTA service areas, which are roughly one-tenth the size of the MTAs used for A and B block auctions, microwave systems will have a greater preclusive effect on system deployment throughout their smaller geographic areas.
- The D, E, and F block licensees will receive only 10 MHz allocations which, because of spectrum limitations, will make it more difficult to engineer their systems around microwave incumbents. The D, E, and F block licenses also have a greater concentration of microwave links per

MHz of spectrum than the larger blocks, which will exacerbate their system engineering problems. (See Attachment A)

The U.S. Government and the Public Will Pay To Line the Pockets of Microwave Incumbents and Their Advisors. A study of the economic impact on the U.S. Government and the public of the abuses of the FCC's transition rules that have been identified demonstrates that:

- Auction revenues to the government will be reduced at least \$.9 billion and up to \$1.9 billion as bidders discount the value of the C, D, E, and F block licensees because of higher than expected microwave relocation costs created by incumbents' demands for unjustifiable premium payments; and
- The public will experience losses of \$120 million per month or more from delay in the inauguration of service by A and B block licensees as a result of the lack of competitive pressure on existing mobile services, and additional of millions of dollars in losses from delays in the initiation of service on the other blocks. (The study is appended as Attachment F)

CLARIFICATION AND FINE TUNING OF THE PCS TRANSITION RULES IS NECESSARY TO ACHIEVE THE AGENCY'S GOALS

The Compensation Rules Should Include Disincentives for Abuse. The rules governing compensation of incumbents for relocation costs should be modified to inhibit bad faith bargaining for unwarranted windfall payments.

- Under no circumstances should costs relating to efforts to obtain premiums be considered part of the expenses for which cost compensation applies, whether attributable to internal resources or external attorneys and consultant fees.
 - For example, the portion of the San Diego study discussed above directed to evaluation of the value of spectrum to the PCS licensee is unrelated to determining the comparability of proposed alternative facilities and should, therefore, not be recoverable.
- If no agreement for relocation is reached during the voluntary negotiation period, only the cost of engineering, installing, testing and cutting over to a comparable alternative system should be recoverable. Further

clarification concerning what constitutes a comparable system in this context is necessary. It may also be appropriate to explore a limitation of cost compensation to the undepreciated cost of an incumbent's existing facilities where circumstances warrant. In no event, however, should any negotiation, legal or consultant fees incurred prior to the beginning of the mandatory period be reimbursable after the close of the voluntary period.

- A microwave licensee found not to have negotiated in good faith during the mandatory negotiation period would not be entitled to any cost recovery, and its license would automatically be modified to a secondary status.

The Twelve-Month Testing Period Requirements Should Be Clarified To Avoid Unnecessary Delays in PCS Deployment. Although microwave incumbents must be ensured of receiving fully comparable communications systems, that can and should be accomplished without introducing unnecessary delay into the relocation process. To this end:

- The FCC should clarify that, if the alternative facilities to which a microwave licensee is relocated prove not to be comparable during the testing period, the licensee need not be restored to its original 2 GHz spectrum, but rather would be entitled to the provision of comparable service by some other appropriate means. This would avoid any requirement to hold the incumbent's 2 GHz spectrum in reserve during that 12-month period.
- The Commission should make clear that the testing period is waivable by incumbents by contract.
- The agency should clarify that the 12-month testing period will begin with the cutover of a microwave system from its 2 GHz facilities to its new facilities.
- In the case of disputes concerning the comparability of new facilities during the 12-month test period, the FCC should provide for independent engineering analysis and arbitration under the same policies applicable to cost disputes that arise during the negotiation process.

A Process For Verification of Public Safety Status Is Required. A process should be defined to allow PCS licensees access to information essential to confirm that a microwave licensee's link or links qualify for the transition period reserved for emergency public safety uses.

ACTION IS NEEDED NOW

Prompt Commission Action Is Critical To Ensure the Rapid Deployment of PCS Services and To Prevent Significant Loss of Future Auction Revenue. Delays in the deployment of new PCS systems resulting from the identified abuses of the transition rules by microwave incumbents and their advisors are conservatively estimated to be costing consumers almost \$4 million per day. Incumbents' efforts to manipulate the relocation process are impeding the introduction of new competition in the wireless marketplace to the detriment of current and future PCS auction winners as well as the public they seek to serve. This adverse impact will be particularly pronounced for C, D, E and F block services for which auctions have not yet been held.

Equally importantly, auction revenues will be less than anticipated by the Commission and Congress because bidders for the C, D, E and F block licenses will be compelled to discount the value of their bids in view of expected increases in relocation costs and delays in their ability to initiate their services attributable to the unreasonable demands of some incumbents. Consequently, the Commission should clarify its transition rules to minimize the opportunities and incentives for abuse and to ensure that they serve their original purpose -- protection of the incumbents from interruption to their service and economic harm -- without producing unreasonable and unnecessary delays in the deployment of PCS services.

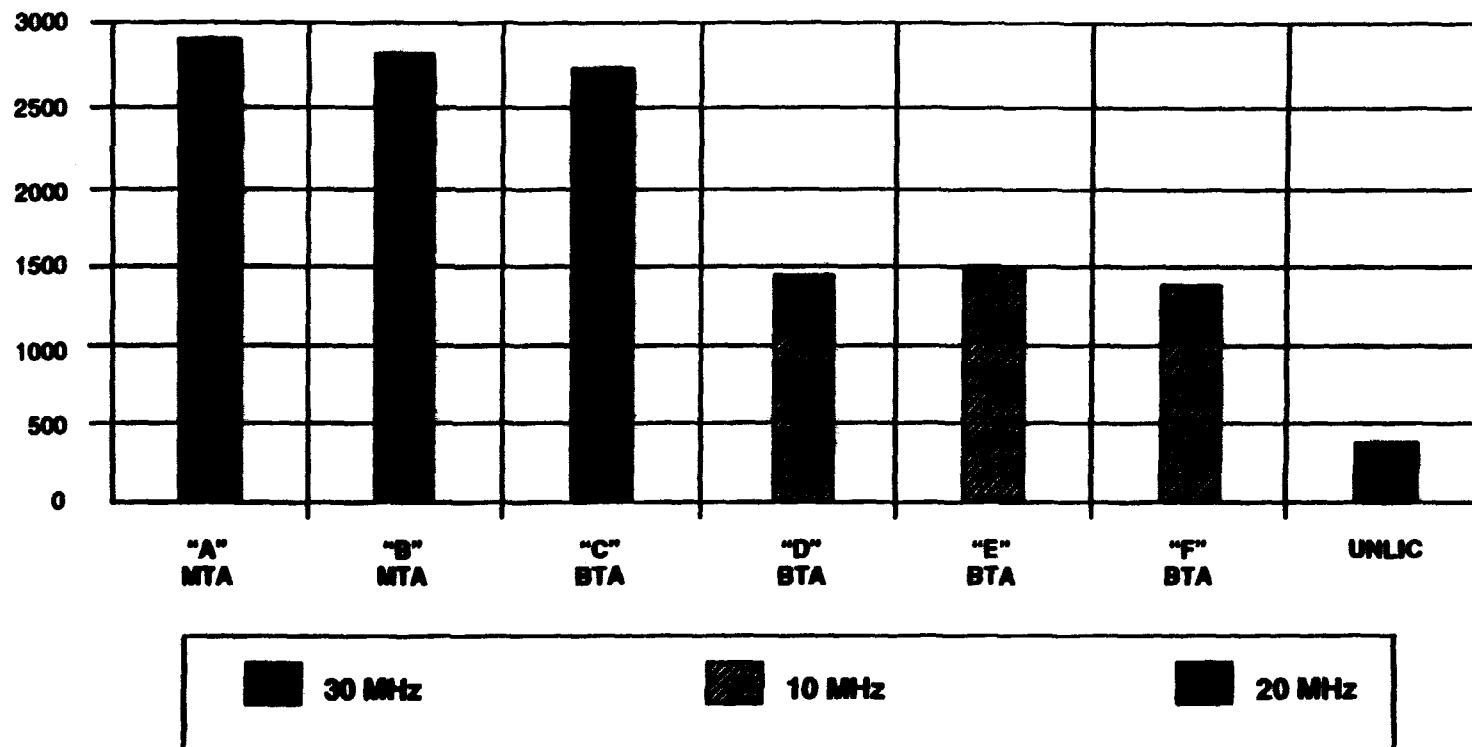
ATTACHMENT A

**DISTRIBUTION OF OFS LICENSES
IN RELATION TO THE FCC'S BLOCK ALLOCATIONS FOR
PERSONAL COMMUNICATIONS SERVICES**

PCS Band Plan	A		D	B		E	F	C	
Lower Band	1850	1860	1870	1880	1890	1910	1910		
10 MHz OFS	696	623	608	663	580	640			
5 MHz OFS		136	105	98	85	85	1		
Upper Band	1930	1940	1950	1960	1970	1980	1990		
10 MHz OFS	654	612	600	656	605	711			
5 MHz OFS	1	127	93	106	80	87			
UPCS Band	1910	1920	1930						
10 MHz OFS	191	194							
5 MHz OFS	1	1	1						

All data extracted from the FCC's XFS database, 9/30/93

Microwave Paths per Block (Continental U.S.)



ATTACHMENT B

**MINIMUM NEGOTIATION
PERIODS FOR 2 GHz MICROWAVE RELOCATION**

Entity Seeking Relocation	Entity Being Relocated			
	Public Safety Licensee		Non-Public Safety Licensee	
	Voluntary Negotiation Period	Mandatory Negotiation Period	Voluntary Negotiation Period	Mandatory Negotiation Period
PCS Licensee	3 years	2 years	2 years	1 year
Unlicensed PCS Equipment Manufacturer	3 years	2 years	0 years	1 year

ATTACHMENT C

ATTACHMENT D

STATEMENTS OF INTERESTED PARTIES REGARDING MICROWAVE RELOCATION

Throughout the Emerging Technologies proceeding, PCS providers and government agencies voiced the concern that the long relocation periods established by the Commission could lead to abuses by microwave incumbents. Members of the microwave community, however, consistently denied that this would happen, arguing that they faced strong incentives to be reasonable. To date, they have continued to reject any suggestions that incumbents are seeking to exploit the FCC's generous transition rules. These statements are at odds with the situation that has developed, as is demonstrated by the difficulties PCS licensees are experiencing in their relocation negotiations (See Attachment E). The following statements, which come from comments filed in the FCC's Emerging Technologies docket (ET Docket No. 92-9), illustrate the differences in the parties' views.

In comments filed as early as 1992, NTIA, the National Telecommunications and Information Administration, warned that "[i]n some cases, an existing user operating on spectrum of extreme importance to a new user might choose to 'hold out' in an attempt to extract all the economic values of the new license." Comments of NTIA, ET Docket No. 92-9, at 14 (filed June 8, 1992).

PCS providers and other interested parties echoed this concern in comments filed January 13, 1993 in that proceeding.

The only possible advantage of the transition period would be to allow incumbents to receive compensation for moving frequencies during the transition period in excess of their costs -- a windfall to incumbents that, in the end, would be borne by PCS consumers -- and to allow them to build more 2 GHz links that might then have to be relocated to new frequencies, also at the public's expense. But even representatives of incumbent users claim they have no interest in garnering funds above their reasonable costs for migrating to other frequencies. American Personal Communications at p. 3 n.7.

A lengthier period [longer than three years] would enable incumbent users with spectrum that is in high demand to extract windfall profits from new licensees by exploiting exclusive rights in a public resource. . . . American Personal Communications at 5-6 (footnote omitted).

A three to ten year period of required voluntary negotiations either will unreasonably delay the implementation of PCS or force PCS licensees to accept unreasonable and costly demands to obtain access to desperately needed spectrum. Cox Enterprises, Inc. at 5.

Any transition period longer than the three years proposed in the NPRM accomplishes nothing but giving the incumbents additional time to demand more

money from the PCS operator in order to relocate. Omnipoint Communications at 1.

Existing users will be able to use the threat of forcing a PCS licensee to commence involuntary relocation proceedings as a means to boost the "price" of relocation and achieve windfall profits. Personal Communications Network Services of New York, Inc. at 6 (footnote omitted).

Under these conditions, [the requirement for full compensation and the provision that no licensee need ever move if the relocation would cause technical or economic harm] a transition period serves no evident purpose other than to provide incumbents a more extended period during which they are in a position to negotiate for their "early" relocation at a premium cost. Telocator at 7.

Therefore, the only result of creating a minimum time period for "voluntary" negotiations would be to encourage incumbents to seek windfall payments during that time period. Time Warner at 12 n.14.

The following statements were some of the responses of microwave industry to these concerns, as contained in their reply comments filed February 12, 1993.

Questar is disturbed, for example, that several parties' comments reflect the belief that 2 GHz microwave licensees will be unreasonable and use this opportunity to make exorbitant demands on new technology service providers. Companies such as Questar have an overriding responsibility to ensure the safety and efficiency of their operations. This objective must be paramount in any evaluation of comparable alternative facilities. If the Commission adopts a reasonable voluntary negotiation period, the parties should be able to negotiate comparable alternative facilities acceptable to both. Questar Service Corporation at 5-6 (footnote omitted).

The concerns expressed by LOCATE [PCNS-NY] and others are groundless and are based on a fundamental misunderstanding of the use to which private microwave users put their facilities. As UTC and numerous other commenters emphasize, private microwave facilities are a business "tool," and not a commercial "franchise." UTC understands that the proponents of commercial PCS systems value spectrum for its profit-making potential, and are inclined to attribute the same motives to private microwave licensees. However, the evidence submitted in this proceeding confirms that microwave licensees will, in good faith, negotiate for reasonable offers to relocate to alternative facilities. UTC at 17.

Further, as UTC argues in its comments, to the extent voluntary negotiations could lead to stone-walling or unreasonable demands for compensation, the mere availability of a mandatory relocation procedure will act as an incentive for incumbent licensees to negotiate in good faith. By granting a "self-help" remedy to new service licensees, the Commission has ensured that incumbent licensees' bargaining power will be restrained. Even without the threat of mandatory relocation procedures, marketplace realities will limit any incumbent's ability to hold-out very long. UTC at 18.

Finally, as UTC noted, most licensees in the 2 GHz band would welcome the opportunity to discuss relocation so that continued operations will not be threatened by interference from the new technology systems, or "orphaned" due to the demise of the 2 GHz equipment market. UTC at 18.

In comments filed on June 15, 1995, in response to Pacific Bell Mobile Services petition for rule making on microwave relocation cost sharing, three parties again raised the issue of incumbent microwave licensees demanding premium payments.

Additionally, allowing incumbents to delay relocation gives them the opportunity and incentive to demand a premium from the PCS licensee and thus increases the cost of PCS service to the public. BellSouth Corporation at 7.

The Commission should make it quite clear that the costs of relocation are exactly that -- costs, and do not include the opportunity for the incumbent licensees to profit from their current residence in the PCS spectrum. Southwestern Bell Mobile Services at 6.

The Commission should establish rules which allow incumbent licensees to be made whole for the path or paths which create interference, but eliminate the ability to exhort unreasonable payments and equipment enhancements from the PCS industry. Southwestern Bell Mobile Services at 6.

In its initial experience dealing with incumbent microwave licensees, the Sprint Venture has encountered significant reluctance by some incumbents to relocate unless, in some cases, entire regional systems are relocated or significant capability upgrades are provided Some incumbents believe they can exact this tribute because PCS providers would otherwise be forced to sit on their spectrum auction investment or install incomplete systems while the voluntary negotiation clock slowly runs its course. Sprint Telecommunications at 4.(4)

The Commission should suppress any expectation that incumbent microwave users may obtain unjust enrichment from the relocation process. Sprint Telecommunications at 6-7.

In the reply round, additional comments were filed on both sides of the issue (June 30, 1995).

Sprint and BellSouth make unsubstantiated allegations that several microwave licensees seek to "exact tribute" for rapid relocation. These vague claims ignore the reality: microwave licensees cannot flick a switch and instantly leap to a higher band. American Association of Railroads at 6.

SBMS and Sprint seem to object to the basic concept that PCS licensees may need to pay a premium to obtain more rapid clearing of the 2 GHz microwave band. The Commission's transition rules were intended to provide a reasonable period for negotiations and the extremely difficult and time-consuming process of identifying appropriate replacement frequencies, conducting engineering studies, constructing new facilities and sites, completing necessary tests and obtaining required government approvals. If a microwave licensee can somehow expedite that process, there is no reason why a PCS licensee with an aggressive implementation schedule should not provide reasonable incentives for that to occur. Association of Public-Safety Communications Officials-International, Inc. at 4-5 (footnote omitted).

Second, many incumbent microwave licensees have demanded the payment of substantial sums of money in return for their willingness to relocate during the voluntary window. For example, incumbent licensees are being advised that, because the "voluntary negotiation period, comparable facilities [are the] worst case scenario. Even if you are eventually relocated involuntarily, you always are entitled to comparable facilities. If you relocate voluntarily, you are entitled to anything that is mutually agreeable."

Relocation costs should be compensatory in nature, rather than a windfall for microwave incumbents. BellSouth Corporation at 11-12 (footnote omitted)(11-12)

As stated above, many incumbent licensees currently view the voluntary negotiation period as a mechanism to exact premiums. BellSouth Corporation at 15.(15)

In their comments, some PCS licensees complain to the Commission that incumbents are seeking more than just "comparable facilities." They have confused, however, their obligations during the involuntary relocation phase, which may be reached three to five years from now, with their opportunity now to give the incumbents an incentive to vacate the band. There is nothing abusive or excessive about seeking to negotiate an attractive buyout package during the voluntary negotiation period. It is exactly what the Commission intended as the best means to induce incumbents to leave the band prior to mandatory relocation. Keller & Heckman at 3.

To avoid abuse of this process by incumbents seeking to extract unreasonable and excessive concessions for relocation, "comparable facilities" should be defined as facilities that permit continued service at interference levels no greater than users experienced on the incumbent's original facilities. Without a clear limitation on the responsibilities of PCS licensees, incumbents may attempt to extract from relocators unjustified premiums that are unrelated to achieving the goal of comparability. McCaw Cellular Communications at 4-5 (footnote omitted).

Nonetheless, some microwave licensees have asserted in their comments that they are entitled to the "fair market value" of the licenses It would frustrate this clear FCC policy to permit incumbents themselves to take advantage of these protections by extracting unreasonable concessions from PCS licensees over and above the costs of comparable replacement facilities. Personal Communications Industry Association at 7 (footnote omitted).

As various parties have noted, the "voluntary" negotiation period has become merely a way for the incumbent licensees to seek an undeserved premium, above the actual cost of comparable facilities, to be relocated. Southwestern Bell Mobile Services at 4.

Now, barely three months into the negotiation process, elements in the PCS community are demanding that the transition plan be substantially revised on the basis of unsubstantiated claims of anticipated abuse on the part of incumbents. UTC at 13-14.

It strains reason to suggest that parties could abuse a process based on voluntary negotiations. UTC at 15.

ATTACHMENT E

PROBLEMS ENCOUNTERED BY PCS LICENSEES REGARDING MICROWAVE RELOCATION

As PCS licensees have begun the task of relocating microwave incumbents from 2 GHz spectrum in order to deploy PCS systems, they have discovered that some incumbents and their advisors have misunderstood the purpose of the FCC's transition rules. These incumbents are attempting to use the transition rules to extract exorbitant premiums from PCS licensees rather than obtain a comparable system. The following are examples of actual relocation demands encountered by PCS licensees during the negotiation process.

1. The PCS licensee surveyed the incumbent's 1.9 GHz system and an equipment manufacturer quoted a relocation price of \$225,000 per link, including an upgrade of equipment. The incumbent demanded \$400,000 in cash for each relocated link, which is in excess of 70% over actual relocation cost. The PCS licensee's negotiator took the incumbent's demand back to the licensee for consideration.

During the interim, the incumbent attended a seminar on the "value" of these frequencies to PCS licensees. The incumbent then rescinded its \$400,000 offer and stated that it would not take less than \$1,200,000 per link. This would put the total demanded by the incumbent to relocate twelve links at \$15,600,000. That is \$12,900,000 more than, or almost five times, the actual cost to relocate the links.

2. An incumbent, a municipality, has engaged a law firm to negotiate microwave relocations with PCS licensees on the incumbent's behalf. Without regard to the underlying systems or the actual costs of relocation, the incumbent's negotiators demand \$1,000,000 per link.

The incumbent itself stated that it has a right to get "whatever it can when it sells its assets." When confronted with the fact that its citizens will have to pay more for PCS services (and more for cellular services since PCS will be less competitive) the incumbent also stated, "that's why we like this - it's a hidden tax."

3. Another incumbent (in the same industry as the incumbent referenced in Example 1) stated that it believes it is unconscionable to demand amounts in excess of the actual relocation costs. Nevertheless, it does not want to look foolish or negligent to its shareholders. The incumbent wanted to know if the PCS licensee would "hold the line" against unreasonable demands by other incumbents, and if not, would the PCS licensee be willing to pay the incumbent additional funds if the incumbent settles early for the costs of relocation.

4. One PCS licensee noted that although less than one-third of the incumbents with whom it must negotiate are causing difficulties, these few account for nearly two-thirds of the links which the PCS licensee must relocate.
5. A PCS licensee has been negotiating with an incumbent since April of 1995. The incumbent has the second largest network that is fully contained within the licensee's market. The incumbent initially asked for a Sonet replacement system which is well beyond what could be considered a comparable replacement. Recently, the incumbent has included in its requirements that the PCS licensee also relocate the incumbent's 6 GHz analog links. Additionally, the incumbent is one of two incumbents that has not allowed site surveys and due diligence review of its network, thus not allowing the PCS licensee determine what would constitute a comparable system.
6. A PCS licensee is negotiating with a non-public safety incumbent which has the largest network requiring relocation in the PCS licensee's market area. The incumbent has stated that if the PCS licensee wants it to relocate the link prior to the end of the voluntary and mandatory negotiation periods, the PCS licensee will have to pay for an aerial fiber replacement system. The incumbent has retained two consultants to assist in the negotiations.
7. The incumbent's system is a large multi-link, multi-MTA system in the PCS band with additional links in the 2.1 GHz band. Ten of its "PCS band" links are in within the PCS licensee's market, but only one is co-channel to the PCS licensee. The incumbent's position is that the more links a PCS licensee is willing to relocate, the better the per link cost. It is also seeking reimbursement for links in the 2.1 GHz band which are not included in the PCS spectrum. The incumbent has stated that if a PCS licensee wants it to relocate prior to the 3 year FCC stated time frame, a premium would be required.
8. The incumbent is a public safety entity and is aware of the leverage that this position affords them. Currently it has a 600 channel analog system which is operating at two-thirds of its capacity. To relocate prior to the expiration of the three-year voluntary and two-year mandatory period, the incumbent is demanding that the PCS licensee provide it with a DS3, 6 GHz replacement system. A sixteen T-1 digital replacement system, which is a considerable upgrade, would be approximately one-half the cost of the requested DS3 system.
9. The incumbent, a governmental entity, has four analog links which the PCS licensee needs to relocate. The PCS licensee determined that the cost of providing comparable systems is \$760,000. The incumbent has stated that it would like a cash payment, and it will do the relocation on its own. The PCS licensee offered \$800,000 for the relocation of all four links. The incumbent